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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,050	02/26/2004	Yoshihiro Ogawa	02910.000121.	3302

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NEW YORK, NY 10112

EXAMINER

NOTE, JANIS L

ART UNIT	PAPER NUMBER
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1756

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/786,050

Applicant(s)

OGAWA ET AL.

Examiner

Janis L. Dote

Art Unit

1756

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see tie attached, paragraph 1. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 3-9.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached, paragraph 2.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

*Janis L. Dote*  
JANIS L. DOTE  
PRIMARY EXAMINER  
GROUP 1500  
1700

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1. The proposed amendment to claim 1 filed on Jun. 29, 2006, in response to the final rejection mailed on Mar. 29, 2006, raises new issues because it limits the Ti chelate compound to be only those compounds represented by formulas (I), (II), (III) and (IV) and hydrates thereof. Said limitation was not present in the claims when the final rejection was mailed.

Proposed new claims 10, 11, and 12 also introduce new issues because they encompass subject matter that was not present in the claims when the final rejection was mailed.

Proposed new claim 12 also appears to introduce a rejection under 35 U.S.C. 112, first paragraph, for lack of adequate written description of the combination of broadly recited "Al hydroxycarboxylic compound" and a monoazo iron compound. When read in light of the entire originally filed specification, the Al hydroxycarboxylic compound disclosure at page 45 refers to the Al hydroxycarboxylic compound represented by formula (13) disclosed on page 38, line 10, to page 39, line 10, which describes "a metal compound of aromatic hydroxycarboxylic acid represented by the following general formula (13)." Also see page 40, lines 9-10, of the specification, which states that "[o]f those [referring to the 4 compounds listed on page 40], a compound having Al for a central metal is preferable . . ."

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2. The examiner's refusal to enter the amendment filed on Jun. 29, 2006, in response to the final rejection, renders applicants' arguments moot regarding said amendment. The prior art rejections of claims 1 and 3-9 set forth in the final rejection mailed on Mar. 29, 2006, paragraphs 5-13, stand for the reasons of record. Applicants' arguments regarding the provisional obvious-type double patenting rejection of claims 1, 3-5, and 7 over the claims of US application 10/717,452 (Application'452) in view of other cited prior art, set forth in the final rejection, paragraphs 16-18, were addressed in the final rejection at paragraph 19. The examiner notes that the rejection is no longer provisional because Application'452 issued as US Patent No. 7,029,813 B2 on Apr. 18, 2006.